



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

APR 13 2012

Mr. Michael S. Green, Esq.
Mr. Patrick O. Dollar, Esq.
Grant & Green, LLC
P.O. Box 60
Royston, Georgia 30662

Mr. Cory O. Kirby, Esq.
Harben, Hartley & Hawkins
340 Jesse Jewell Parkway
Wells Fargo, Georgia 30501

Dear Messrs. Green, Dollar and Kirby:

This refers to the 2011 redistricting plan for Board of Commissioners and for the Board of Education of Greene County, Georgia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. We received the response to our request for additional information from the board of commissioners and the board of education on February 13, 2012; additional information was received through March 28, 2012.

We have carefully considered the information you have provided, as well as census data, comments and information from other interested parties, and other information, including the county's previous submissions. Under Section 5, the Attorney General must determine whether the submitting authority has met its burden of showing that the proposed changes neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race or color or membership in a language minority group. *Georgia v. United States*, 411 U.S. 526 (1973); *Procedures for the Administration of Section 5 of the Voting Rights Act of 1965*, 28 C.F.R. 51.52(c). For the reasons discussed below, I cannot conclude that either board's burden under Section 5 has been sustained as to the submitted changes. Therefore, on behalf of the Attorney General, I must object to the changes currently pending before the Department.

According to the 2010 Census, Greene County has a total population of 15,994, of whom 6,135 (38.4%) are black, and a total voting age population of 12,697, of whom 4,358 (34.3%) are black. Since 1990, the county's total population has grown, while its black population percentage has decreased. These changing demographics underlie our analysis of the 2011 redistricting plan.

Both the board of commissioners and the board of education have five members, of whom four are elected from single-member districts and one is elected at-large countywide. Under the benchmark plan, black voters had the ability to elect candidates of choice in two of the single-member districts, Districts 1 and 2. Under the proposed plan, neither District 1, with a black voting age population of 39.6 percent, nor District 2, with a black voting age population of 45.1 percent, are ability-to-elect districts for black voters. The county identifies proposed District 3 as one in which black residents would have the ability to elect candidates of choice. Our analysis has determined otherwise. Although the black percentage of the electorate does increase in proposed District 3, the registered voter data for this proposed district shows that white registered voters will continue to be a majority in the district. In combination with the racially polarized voting that exists in the district, the proposed district will not provide black voters with the requisite ability to elect a candidate of choice. As such, there are no ability-to-elect districts in the proposed plan.

The elimination of both ability-to-elect districts was unnecessary and avoidable. Although there has been a decrease in the black share of the county's population over the past ten years, the ability to draw at least one black ability-to-elect district still existed. In this regard, we note that a redistricting plan that provided one ability-to-elect district out of four districts, and out of five total seats, may not have constituted a prohibited effect under Section 5.

There may be circumstances in which the jurisdiction asserts that, because of shifts in population or other significant changes since the last redistricting * * *, retrogression is unavoidable. In those circumstances, the submitting jurisdiction seeking preclearance of such a plan bears the burden of demonstrating that a less-retrogressive plan cannot reasonably be drawn.

Guidance Concerning Redistricting Under Section 5 of the Voting Act, 76 Fed. Reg. 7470, 7472 (Feb. 9, 2011). Minority officials presented several such alternative plans. Because some of these plans sought to maintain two ability-to-elect districts, the plans contained districts that may not have been as strong as those that existed in the benchmark plan. They did, however, inform county officials that less retrogressive plans were possible. The county, however, proceeded to endorse, and the legislature proceeded to adopt for the county, a plan that eliminated both ability-to-elect districts, never pausing to determine whether a plan with one ability-to-elect district was acceptable, and voted along racial lines to adopt the proposed plan.

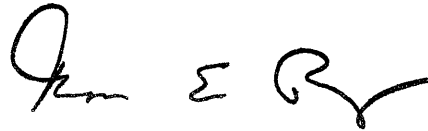
Based on the existence of less retrogressive alternative plans presented during the redistricting process, it is clear that the county has failed to establish the absence of a discriminatory effect, even in the context of the changed demographics. There is sufficient credible evidence that precludes the county from establishing, as it must under Section 5, that the redistricting plan to elect the board of commissioners and board of education will not have a retrogressive effect.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. *Georgia v. United States*, 411 U.S. 526 (1973); 28 C.F.R. 51.52. In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance.

Therefore, on behalf of the Attorney General, I must object to the county's 2011 redistricting plan for the board of commissioners and the board of education for Greene County.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the United States District Court for the District of Columbia is obtained, the submitted changes continue to be legally unenforceable. *Clark v. Roemer*, 500 U.S. 646 (1991); 28 C.F.R. 51.10. To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action that Greene County plans to take concerning this matter. If you have any questions, you should contact Robert S. Berman (202/514-8690), a deputy chief in the Voting Section.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tom E. Perez', with a stylized flourish at the end.

Thomas E. Perez
Assistant Attorney General